

MAIL TO:

STATE OF UTAH
 DIVISION OF PURCHASING
 3150 STATE OFFICE BUILDING, STATE CAPITOL
 P.O. BOX 141061
 SALT LAKE CITY, UTAH 84114-1061
 TELEPHONE (801) 538-3026
<http://www.purchasing.state.ut.us>

Request for ProposalSolicitation Number: **NO3026**Due Date: **10/08/02 at 3:00 P.M.**

Date Sent: September 13, 2002

Agency Contract

Goods and services to be purchased:

"STATEMENT OF INTEREST"

**AGENCY CONTRACT - DEVELOPMENT OF TMDL AND WATERSHED MANAGEMENT PLANS FOR
 THE ESCANLANTE AND PARIA RIVER WATERSHED**

Please complete

Company Name		Federal Tax Identification Number	
Ordering Address	City	State	Zip Code
Remittance Address (if different from ordering address)	City	State	Zip Code
Type <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Proprietorship <input type="checkbox"/> Government	Company Contact Person		
Telephone Number (include area code)	Fax Number (include area code)		
Company's Internet Web Address	Email Address		
Discount Terms (for bid purposes, bid discounts less than 30 days will not be considered)	Days Required for Delivery After Receipt of Order (see attached for any required minimums)		
<p>The following documents are included in this solicitation: Solicitation forms, instructions and general provisions, and specifications. <u>Please review all documents carefully before completing.</u></p> <p>The undersigned certifies that the goods or services offered are produced, mined, grown, manufactured, or performed in Utah. Yes_____ No_____. If no, enter where produced, etc._____</p>			
Offeror's Authorized Representative's Signature		Date	
Type or Print Name		Position or Title	

**STATE OF UTAH
DIVISION OF PURCHASING**

Request for Proposal

Solicitation Number: NO3026

Due Date: 10/08/02

Vendor Name:

"STATEMENT OF INTEREST"

AGENCY CONTRACT - DEVELOPMENT OF TMDL AND WATERSHED MANAGEMENT PLANS FOR THE ESCANLANTE AND PARIA RIVER WATERSHED, PER THE ATTACHED SPECIFICATIONS.

QUESTIONS ON SPECIFICATIONS CALL CARL ADAMS AT (801) 538-9215.

QUESTIONS ON PURCHASING PROCESS (NOT RELATED TO SPECIFICATIONS) CALL NANCY ORTON AT (801) 538-3148.
RX: 480 37000000006

REQUEST FOR PROPOSAL - INSTRUCTIONS AND GENERAL PROVISIONS

1. **PROPOSAL PREPARATION:** (a) All prices and notations must be in ink or typewritten. (b) Price each item separately. Unit price shall be shown and a total price shall be entered for each item bid. (c) Unit price will govern, if there is an error in the extension. (d) Delivery of services as proposed is critical and must be adhered to. (e) Incomplete proposals may be rejected. (f) This proposal may not be withdrawn for a period of 60 days from the due date. (g) Where applicable, all proposals must include complete manufacturer's descriptive literature. (h) By signing the proposal the offeror certifies that all of the information provided is accurate, that they are willing and able to furnish the item(s) specified, and that prices offered are correct.

2. **SUBMITTING THE PROPOSAL:** (a) The proposal must be signed in ink, sealed, and if mailed, mailed in a properly-addressed envelope to the DIVISION OF PURCHASING, 3150 State Office Building, Capitol Hill, Salt Lake City, UT 84114-1061. **The "Solicitation Number" and "Due Date" must appear on the outside of the envelope.** (b) Proposals, modifications, or corrections received after the closing time on the "Due Date" will be considered late and handled in accordance with the Utah Procurement Rules, section 3-209. (c) **Your proposal will be considered only if it is submitted on the forms provided by the state. Facsimile transmission of proposals to DIVISION will not be considered.** (d) All prices quoted must be both F.O.B. Origin per paragraph 1.(c) and F.O.B. Destination. Additional charges including but not limited to delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, costs of bonds, or for any other purpose must be included in the proposal for consideration and approval by the Division of Purchasing & General Services (DIVISION). Upon award of the contract, the shipping terms will be F.O.B. Destination, Freight Prepaid with freight charges to be added to the invoice unless otherwise specified by the DIVISION. No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, costs of bonds, or for any other purpose will be paid by the state unless specifically included in the proposal and accepted by DIVISION. (e) By signing the proposal the offeror certifies that all of the information provided is accurate and that he/she offers to furnish materials/services for purchase in strict accordance with the requirements of this proposal including all terms and conditions.

3. **BONDS:** The state has the right to require a bid or proposal bond, payment bond and/or a faithful performance bond from the offeror in an amount not to exceed the amount of the contract.

4. **PROPRIETARY INFORMATION:** Suppliers are required to mark any specific information contained in their bid which is not to be disclosed to the public or used for purposes other than the evaluation of the bid. Each request for non-disclosure must be accompanied by a specific justification explaining why the information is to be protected. Pricing and service elements of any proposal will not be considered proprietary. All material becomes the property of the state and may be returned only at the state's option. Proposals submitted may be reviewed and evaluated by any persons at the discretion of the state.

5. **BEST AND FINAL OFFERS:** Discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of assuring full understanding of, and responsiveness to, solicitation requirements. Prior to award, these offerors may be asked to submit best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by a competing offeror.

6. **SAMPLES:** Samples, brochures, etc., when required, must be furnished free of expense to the state and if not destroyed by tests may, upon request made at the time the sample is furnished, be returned at the offeror's expense.

7. **DIVISION APPROVAL:** Contracts written with the State of Utah, as a result of this proposal, will not be legally binding without the written approval of the Director of the DIVISION.

8. **AWARD OF CONTRACT:** (a) The contract will be awarded with reasonable promptness, by written notice, to the lowest responsible offeror whose proposal is determined to be the most advantageous to the state, taking into consideration price and evaluation factors set forth in the RFP. No other factors or criteria will be used in the evaluation. The contract file shall contain the basis on which the award is made. Refer to Utah Code Annotated 65-56-

21. (b) The DIVISION can reject any and all proposals. And it can waive any informality, or technicality in any proposal received, if the DIVISION believes it would serve the best interests of the state. (c) Before, or after, the award of a contract the DIVISION has the right to inspect the offeror's premises and all business records to determine the offeror's ability to meet contract requirements. (d) The DIVISION will open proposals publicly, identifying only the names of the offerors. Proposals and modifications shall be time stamped upon receipt and held in a secure place until the due date. After the due date, a **register** of proposals shall be established. The **register** shall be open to public inspection, but the proposals will be seen only by authorized DIVISION staff and those selected by DIVISION to evaluate the proposals. The proposal(s) of the successful offeror(s) shall be open for public inspection for 90 days after the award of the contract(s). (e) Utah has a reciprocal preference law which will be applied against bidders bidding products or services produced in states which discriminate against Utah products. For details see Section 63-56 20.5 -20.6, Utah Code Annotated.

9. **ANTI-DISCRIMINATION ACT:** The offeror agrees to abide by the provisions of the Utah Anti-discrimination Act, Title 34 Chapter 35, U.C.A. 1953, as amended, and Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibit discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age, and Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities. Also offeror agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the workplace. Vendor must include this provision in every subcontract or purchase order relating to purchases by the State of Utah to insure that the subcontractors and vendors are bound by this provision.

10. **WARRANTY:** The contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah applies to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the State has relied on the contractor's skill or judgement to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.

11. **DEBARMENT:** The CONTRACTOR certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the CONTRACTOR cannot certify this statement, attach a written explanation for review by the STATE.

12. **GOVERNING LAWS AND REGULATIONS:** All State purchases are subject to the Utah Procurement Code, Title 63, Chapter 56 Utah Code Annotated 1953, as amended, and the Procurement Rules as adopted by the Utah State Procurement Policy Board (Utah Administrative Code Section R33). These are available on the Internet at www.purchasing.state.ut.us.

Solicitation # NO3026 - Request for Statement of Interest (SOI)
for a TMDL Water Quality Study of the **Paria and Escalante** watersheds, Utah

Purpose and Intent

The Utah Division of Water Quality is requesting proposals from environmental consulting firms to complete a water quality study that addresses water quality impairments and establishes acceptable Total Daily Maximum Loads (TMDLs) for submission to EPA by the Division. This will include detailed recommendations to remedy all water quality impairments as well as preparation of project implementation plans (PIPs) containing solutions and best management practices (BMPs) for pollution sources throughout the Paria and Escalante River watersheds, including their tributaries. The Division of Water Quality will evaluate and rank each Statement of Interest (SOI) based on the evaluation criteria outlined in this request and will negotiate a contract with the firm who submits the highest ranking SOI.

Background Information

The Paria (HUC 14070007) and Escalante River (HUC 14070005) watersheds are located in Southern Utah. In the State of Utah Water Quality Standards (§R317-2, UAC), the Paria River and tributaries are identified as having the following beneficial uses: 2B (secondary contact recreation), 3C (non-game fishery), and 4 (agriculture). The Escalante River and tributaries from its confluence with Boulder Creek, including Boulder Creek, to headwaters are identified as having the following beneficial uses: 2B (secondary contact recreation), 3A (coldwater fishery), and 4 (agriculture). The Paria and Escalante Rivers are listed on the 2000 303d list for waters requiring the development of Total Maximum Daily Loads (TMDLs). The cause of impairment in the Paria River has been identified as excess concentrations of total dissolved solids. The cause of impairment in the Escalante River is exceedances of the coldwater fishery temperature criteria.

The pollutant loads produced by point and non-point sources will need to be developed for the TMDL. Applicants are encouraged to utilize their knowledge of the basin and existing data to assist the Division in determining specific sources and contributing areas of pollution for improvement of water quality in the basin. This will include not only an evaluation of current conditions, but also a projection of future conditions in the watershed.

Table 1. Impaired waterbodies in the Paria and Escalante River watersheds requiring the development of TMDLs (from Utah's 303(d) list):

Waterbody description	Parameters of concern	Beneficial Use Impaired
Paria River	Total Dissolved Solids	(4) Agriculture
Escalante River	Temperature	(3A) Cold Water Fishery

Work Elements and Deliverables

1. **Compile, review, validate and evaluate all existing and pertinent surface and ground water quality data and information. Acquire existing GIS data related to the water quality impairments identified. Compile available flow data from USFWS, USGS, DEQ, DNR, BLM, USFS, BOR, private water companies or other sources with applicable monitoring programs. Identify methods or protocols to be used and determine any gaps in the data needed for use in this assessment.**

Deliverables

- a) A written characterization and evaluation of the water quality, flow and GIS data for the watershed.
- b) Tables showing the actual data, where data was obtained, dates of data collection, and any gaps in data. Narrative describing any additional data needs. Data will be provided both in written and electronic form.
- c) Statistical assessment of data, such as number of samples, means, median, variance included for each monitoring station and for the overall data set. This must include a seasonal analysis to identify seasonal variations.
- d) Recommendations for any supplemental monitoring that is needed to complete the remaining work elements.
- e) Show reliability of data.
- f) Show the scale of the study.

Note: Work Element #1 will be completed within the first 60 days of the contract in order to allow for supplemental sampling of water quality and or flow to occur if needed.

2. **Identify and characterize all significant causes and sources of point and non-point source pollution (including ground water inflows, urban runoff, storm water, and agricultural runoff) within the Paria and Escalante River watersheds that have or are contributing to current water quality impairments.**

Deliverables

- a) A written description and characterization of all significant pollutant causes and sources.
- b) Water budgets for the basins including any future contributions or removals from trans-basin diversions, major diversions and/or other issues from the State Engineers office regarding water rights. In establishing basin hydrology, a review of any hydrologic modeling developed by the Division of Water Resources or the State Engineers office should be included.
- c) Sources may be categorized (e.g. Agriculture, NPS, urban runoff) but approval of categories will need to be obtained from DWQ staff. When categories are allowed

sufficient resolution of specific contributions will need to be identified to support data obtained in categories (e.g. Animal feeding operations or riparian site conditions will need to be obtained). Identify the sources of information used along with results obtained in completing data compilation and analysis for each significant source.

- d) Lined and unlined canals, flood irrigated land, sprinkled irrigated land, soils prone to flooding and erosion, oil and gas development, mining and drilling.
 - e) GIS map coverages identifying major land uses and all significant sources of point and non-point source pollution.
 - f) Written description of the data, methods, and calculations used to determine significant sources.
 - g) GIS map coverage identifying basin hydrology including streams, canals and major irrigation pathways.
 - h) Participation in field surveys to collect supplemental source characterization information and a description of the approach, methodology and commitment of time to acquire additional information.
3. **Calculate the seasonal and annual loadings for parameters of concern from all sources that may have an impact on all 303(d) listed impaired waters in the Paria and Escalante River watersheds. Quantify where loading data is available or provide a logical estimation where data is limited or not available (e.g. Modeling to determine loading from animal wastes; number of animals, distance from live water, export coefficients etc.).**

Deliverables

- a) Tabulated results of loading calculations for each significant source and each regular DWQ monitoring point in the watershed.
 - b) Methodology for calculation of pollution loads from point and non-point sources. If modeling is proposed, a thorough description of the model software used, inputs, assumptions and outputs must be included.
 - c) Written description of the data sources, methods, and calculations used to compile point and non-point source loadings.
 - d) Electronic and hard copies of all data, calculations, and results utilized for loading estimates.
 - e) Copies of publications and methods used as a basis to estimate loading where insufficient data exists.
4. **Determine the source or location for each identifiable point and non-point source of pollution.**

Deliverables

- a) Written listing of sources/source areas and location to include injection wells to groundwater as well as impacts from roads on public lands, with as much

specificity as possible to describe the associated point and non-point source pollution.

- b) GIS map coverage showing sites identified in the above list of source and source areas.

5. Identify probable future sources of pollution as a function of land use changes such as mining, urbanization, oil and gas development, etc. Project any additional loading that would be associated with additional sources and propose measures to avoid or minimize these loads.

Deliverables

- a) GIS map coverage showing projected land use changes or projected changes associated with sites of point and non-point source pollution.
- b) Calculation of future pollution loading potential with written description of basis, methods, calculations, and tabular estimates of loading anticipated.
- c) Written recommendations of specific measures (BMPs, BATs, zoning ordinances, etc.) to avoid or minimize the anticipated additional point and non-point source pollution loads identified in this element.

6. Prepare Project Implementation Plans (PIPs) utilizing EPA guidance for 319 projects to direct implementation of control measures or to secure non-point Source 319 funds or other funds to implement the proposed BMPs or BATs. Recommend appropriate Best Management Practices (BMPs) or Best Available Technology (BAT) that will eliminate or minimize current point and non-point source loadings when implemented. Develop a prioritization schedule for recommending project implementation.

Deliverables

- a) Written prescription of specific BMPs or BATs on a sub-watershed or waterbody basis to achieve water quality goals identified in this scope of work.
- b) Estimated costs for installation, operation, and maintenance of each BMP or BAT recommended, presented in tabular form.
- c) Project Implementation Plan (PIP) with detailed written description of how each BMP or BAT considered should be implemented and the assessment of its applicability. Describe the effectiveness towards the reduction of current or future pollutant loading. The written description shall include a complete reference for the source and any articles that describe the effectiveness of the BMP or BAT. The PIP shall have sufficient detail, such as BMP costs, effectiveness of BMP, and pollutant loading reduction levels, for the anticipated funding source to implement the proposed BMPs or BATs identified as needed (see Attachment C). The PIP shall be a stand-alone chapter or appendix with all essential elements.

7. **Quantify reductions in loading that should be achieved upon implementation of each BMP or BAT listed in Work Element No. 6.**

Deliverables

- a) Written description of methods, calculations, and basis used to calculate expected load reductions from implementation of the BMPs or BATs identified in the PIP.
 - b) Tabular output of expected load reductions calculated for each BMP or BAT recommended for each significant source and for the entire watershed area.
8. **Conduct a use attainability analysis utilizing EPA methodology and protocol to determine if existing standard for Total Dissolved Solids is applicable to waters in the Paria River watershed and if existing standard for Temperature is applicable to waters in the Escalante River watershed. Where the current standard is too stringent and water quality couldn't be restored through implementation of the PIP, recommend site specific criteria as needed for specific reaches of impaired waters. Provide information and data required to support the adoption of site-specific criteria.**

Deliverables

- a) A concise report containing data, methodology, rationale, and justification to support either existing TDS and temperature criteria or selection of site-specific criteria for specified reach segments of studied waters as defined in Region VIII Guidance for Use Attainability Analyses for Aquatic Life Uses.
 - b) Any additional requirements of federal UAA regulations will need to be researched and added as needed.
 - c) GIS coverage containing applicable TDS criteria with a specific focus on any site criteria recommendations.
9. **Using point and non-point source pollution information and under the Division's guidance and in conjunction with local water quality committee, prepare a draft TMDL Technical Report that conforms to EPA requirements. Make recommendations to the Division for establishment of endpoints or targets that will achieve water quality compliance and restore beneficial uses to the Paria and Escalante River watersheds based on existing criteria or recommended site specific criteria. The Utah Division of Water Quality will determine the criteria. This work will be supported by a complete technical analysis to include: modeling (as needed); assessment necessary to support recommendations for selection of endpoints; pollution load reductions; and allocation of loads to the various sources in the watershed. The technical analysis must include a linkage analysis to demonstrate the relationship between impairments, sources, water quality**

endpoints and proposed load reductions. If modeling is used, a complete description of the model, any software used, inputs, assumptions and outputs must be provided in the draft and final reports. In addition, a beneficial use attainability analysis may be required as part of the TMDL analysis for specific stream reaches or tributaries if natural background levels of pollutants are such that restoration activities will not bring water quality into compliance with state standards.

Deliverables

- a) The TMDL analysis will be a stand alone chapter or appendix of the report with all the essential elements required by EPA for approval of a TMDL. The attached format (Attachment B) is an outline for the report.
- 10. Assist the DWQ watershed coordinator in presenting information, findings, analysis, and recommendations from the contract work to local watershed steering committees, technical advisory committees, workgroups, and Division managers throughout the duration and at the end of the project as needed or warranted.**

Deliverables

- a) The contractor shall attend the regular meetings of the Watershed Steering Committee during the contract period to provide updates and briefings from the contract work as requested by the Division. The minimum number of presentations shall be three (3) and the maximum shall be five (5).
- b) The contractor shall attend at least two (2) public outreach meetings associated with the TMDL(s) developed for water bodies in the study area. Participation in public outreach meetings may involve preparing materials and making a presentation to explain the contract work and results.

Report Outputs

Data Evaluation Report

The contractor shall provide a written report to the Division that includes all deliverables and fulfills work element # 1 within 60 days of the starting date of the contract. Format for draft and final reports will be MS WORD.

Draft Report

The contractor shall provide a written draft report that includes the deliverables identified for each work element. The report will include a chapter or appendix specifically addressing TMDL requirements for submission to US EPA as outlined in work element #9. The report will also include a chapter or appendix specifically addressing PIP requirements for BMP/BAT control of all sources of significant pollutant contributions. The report shall include GIS maps of the

watershed (along with electronic copies of the data layers in an ArcView shapefile format). The maps shall include, at a minimum:

- a) Overall Watershed boundary with sub-watershed boundaries delineated.
- b) All water bodies in the watershed (streams, lakes, ponds, significant previously delineated wetlands).
- c) Major political boundaries (City and County).
- d) Major roads and highways.
- e) General topography.
- f) Soils and vegetation information (as available).
- g) Surficial geology, land forms, (flood plains, terraces, upland) hydrology, channel type and conditions, land uses, and major storm water systems and discharge locations.
- h) Water quality data for each monitoring site in the watershed.
- i) Each of the map coverages identified in the work elements.

The report will also include a spreadsheet in Excel format with all of the data and analysis utilized for this report. The contractor shall provide fifteen (15) written copies and one (1) electronic copy of the draft report for review (suitable for monochromatic reproduction) to the Division **no later than October 31, 2003**.

Final Report

Upon Division approval of the revisions to the draft report, the contractor shall provide a master copy of the final report suitable for duplication along with 30 copies of the final report incorporating all elements of the draft report with suggested changes and modifications provided from the Division's review of the draft. Any changes needed to GIS or electronic information identified in the Division's review of the Draft Report shall be modified to meet the comments from the Division and provided in the Final Report. The final report and all associated materials required to complete the work elements described herein shall be provided to the Division **no later than December 31, 2003**.

All information, reports, maps, tables, data, and supporting documents shall become property of the Division upon delivery.

Cost Reimbursements

1. The contractor shall submit monthly billing statements to the Division for payment of actual costs incurred for work required in this contract.
2. The Division may authorize payment of the billed amount up to a maximum of 50% of the total contract amount.
3. Upon the contractor's fulfillment of the draft report requirements, the Division may authorize payment of up to 70% of the contract.
4. Upon the contractor's satisfactory fulfillment of the final report requirements, the Division may authorize payment of any remaining balance (30%) up to the total contract amount.

Monthly Status reports

The contractor shall submit written monthly status reports with the monthly billing that describes the work completed in the preceding month. The report will identify the progress made to date on each of the ten (10) work elements and the draft and final reports.

Proposal content

Each proposal shall not exceed 40 typed pages and contain at a minimum, the following elements:

1. Identification of the contractor and qualifications
 - Name of firm
 - Office location (s)
 - Description of firm's general background and capabilities
2. Experience information
 - Description of the specific point and non-point source pollution projects, TMDL projects, and closely related water quality projects that the contractor has worked on. This element shall include a contact person and phone number for each project that can verify work completed. An explanation of how each project relates to the proposed work and the environmental issues specific to the geographic study area described under this request should also be included.
3. Description of the proposed project team
 - This element shall include a detailed description of staff that will work on specific elements of the project, including their academic and professional credentials. Any sub-contractors that will be utilized must also be identified along with their credentials.
4. Description of approach and methodology
 - This element shall describe the proposed approach and methodology to be used to fulfill the work elements identified in this RFP. A description of how each work element will be accomplished should be provided.
5. Time Commitment
 - This section shall itemize the number of hours for each project member and the total hours committed to each work element.

Key dates

Proposal Due Date and Time: **October 8, 2002 @ 3:00 p.m.**

Notification of Contract Award **December 13, 2002**

Project start date: **January 1, 2003**

Project completion date: **December 31, 2003**

Administration Information

Proposal Due Date, Time and Location

Four (4) copies of your written proposal must be received by **Oct. 8, 2002 @ 3:00 p.m.** at:

State of Utah

Division of Purchasing and General Services

3150 State Office Building, Capitol Hill

PO Box 1410161

Salt Lake City UT 84114-1061

Late proposals will not be considered**Contract Term**

The contract start date will be within 15 days of contract award, through December 31, 2003

Questions

For technical content-related questions contact Carl Adams, Utah Division of Water Quality, (801) 538-9215, FAX (801) 538-6016 Email carladams@utah.gov

For procurement questions contact Nancy Orton, Division of Purchasing and General Services, (801) 538-3148.

Evaluation Criteria:**Contract Terms: (qualifying/disqualifying)**

Firm is able to meet the terms and requirements of the contract.

1. Quality and suitability of written SOI package: (6%) (25 points possible)

Package is clear, concise, and responsive. (Weight = 5)

2. Scientific and Technical Content: (40%) (160 points possible)

- a. Package shows an understanding of the goals of the Division. (Weight = 7)
- b. Package shows a sound overall understanding of the scope of work. Shows a working familiarity with the TMDL process and regulatory requirements needed to gain EPA and local stakeholder buy in and approval. (Weight = 7)
- c. Package shows an understanding of the watershed to be studied and the issues to be addressed by the study. (Weight = 8)
- d. Hours allocated for each work element reflect realistic understanding of the work elements, and needed staff time to adequately complete each work element (Weight = 10)

3. Specific Staff Experience: (27%) (105 points possible)
 - a. Academic qualifications of “directly involved staff” (i.e. staff that will actually be working on the project in more than just an “oversight” capacity) to complete TMDL water quality studies. (Weight = 3)
 - b. Suitability and technical backgrounds of “directly involved staff” for this TMDL. (Weight = 4)
 - c. Experience and expertise of “directly involved staff” in development of TMDL’s that are topically and regionally similar to the TMDL(s) required in this study. (Weight = 5)
4. BMP & BAT Experience and Expertise: (20%) (80 points possible)
 - a. Academic qualifications of “directly involved staff” to design and compile requisite Best Management Practices (BMPs) and Best Available Technology (BAT) for implementation of the TMDL recommendations. (weight = 10)
 - b. Direct experience and expertise in design and engineering of “directly involved staff” to develop BMP’s and BAT needed for this TMDL . (weight = 10)
5. Prior Experience with DWQ in TMDL Contracts: (6%) (25 points possible)
 - a. Prior contracting experience with DWQ for TMDL studies resulted in good quality and timely work products with minimal oversight from DWQ. *(Firms with no prior TMDL contract experience with DWQ will score a 5 out of a possible 5 for this category)*

ATTACHMENT A

UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY

GENERAL PROVISIONS

1. As used throughout these General Provisions, the following terms shall have the meanings set forth herein:

- a. "Contractor" means the person, firm, or organization performing the services or delivering the items described in this Contract.
- b. "State" means the State of Utah.
- c. "Department" means the Utah Department of Environmental Quality.
- d. "Director" means the Executive Director of the Utah Department of Environmental Quality or duly authorized representative.
- e. "Subcontract" means any Contract between the original Contractor and a third party for the provision of items or services which the original Contractor has himself contracted with the Department to perform, except purchase orders for standard commercial equipment, products, or services.
- f. "Recipient" means individual persons who are eligible for services provided by the Department or by an authorized Contractor of the Department.
- g. "Public officer" means all elected or appointed officer of the State or any of its political subdivisions who occupy policy-making posts but excludes legislators or legislative employees.
- h. "Public employee" means a person who is not a public officer who is employed on a full, part-time, or contract basis by the State or any of its political subdivisions but excluding legislators or legislative employees.
- i. "State Law" includes, but is not limited to statutes, rules, and court decisions of the State.
- j. "Federal Law" includes, but is not limited to statutes, rules, and regulations of federal government.
- k. The definitions set forth in the "Utah Procurement Code," § 63-56-5 Utah Code Annotated, 1953, as amended and the "Utah Public Officers' and Employees' Ethics Act," § 67-16-3 Utah Code Annotated, 1953, as amended.
- l. "General Provisions" means those provisions of this Contract which are set forth under the heading "General Provisions."
- m. "Special Provisions" means those provisions of this Contract which are in addition to the General Provisions.

2. CONFLICT BETWEEN PROVISIONS

When there are Special Provisions, and there is a conflict between the General Provisions and the Special Provisions, the Special Provisions shall govern. In the event that the Contractor's terms, conditions, specifications, or scope of work conflict with those of the Department, the Department's terms, conditions, specifications, and scope of work shall prevail for purposes of contract interpretation.

3. GENERAL REQUIREMENTS

- a. This contract shall become effective on the date executed by the Director and approved by the State

Division of Finance or at a later date as specified in the Contract.

- b. This Contract shall be construed in accordance with Utah law and any legal action thereupon shall be initiated in an appropriate court of the State of Utah.
- c. The Contractor shall obtain and maintain all licenses, permits, and authority necessary to do business and render services under this Contract, and shall comply with all laws regarding unemployment insurance, disability insurance, and workmen's compensation.
- d. Both parties hereto agree that the Contractor shall be deemed an independent contractor in the performance of this Contract, and shall comply with all laws regarding unemployment insurance, disability insurance, and workmen's compensation. As such, the Contractor shall have no authorization, express or implied, to bind the State of Utah to any agreement, settlement, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the State of Utah, except as expressly set forth herein.
- e. No public officer or public employee shall, through the use of his official position, secure or gain a pecuniary benefit arising out of the execution or implementation of this Contract in violation of the Public Officers' and Employees' Ethics Act Title 67, Chapter 1, Utah Code Annotated, 1953, as amended.
- f. Contractor represents that none of its officers or employees are officers or employees of the State of Utah unless disclosure has been made in accordance with Sections 67-16-7 and 67-16-8, Utah Code Annotated, 1953, as amended.
- g. Contractor represents that there is no conflict of interest arising out of the execution or implementation of this Contract.
- h. The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (Contract) by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the State.
- i. A declaration by any court, or any other binding legal authority, that any provision of this Contract is illegal and void shall not affect the legality and enforceability of any other provision of this Contract, unless the provisions are mutually dependent.

4. OTHER CONTRACTS

The Department may perform additional work relating to this Contract or award other contracts for such work. The Contractor shall cooperate fully with such other contractors and/or public officers and public employees in the scheduling of and coordination of its own work with such additional work. The Contractor shall give other contractors reasonable opportunity for the execution of their work and shall not commit or permit any act which will interfere with the performance of work as scheduled by any other contractor or by public officers and public employees. This section shall be included in any subcontracts and will be included in the contracts of all contractors with whom this Contractor will be required to cooperate. The Department shall equitably enforce this section as to all contractors, to prevent the imposition of unreasonable burdens on any contractor.

- a. Unless otherwise agreed by the terms of this Contract, the Contractor shall not subcontract with any other party for the furnishing of any of the work or services contracted for herein without the prior written approval of the Department. When authority to subcontract is granted, the Contractor agrees to use written subcontracts drawn in conformity with Federal and State laws which are appropriate to the activity covered by the subcontract, which shall include all of the general provisions set forth herein, and which shall apply with equal force to the subcontract, as if the Subcontractor were the Contractor referred to herein. The Contractor is responsible for contract performance whether or not subcontractors are used. The Contractor shall submit a copy of each subcontract to the Department for approval at least 20 days prior to its effective date.

b. No rights or obligations of the Contractor under this Contract shall be assigned without the prior written consent of the Department. The Contract is voidable and subject to immediate cancellation by the Director upon the Contractor's becoming insolvent, or filing proceedings in bankruptcy or reorganization under Title XI, United States Code.

5. OWNERSHIP OF INFORMATION

Title to all reports, information, data, computer data elements, and software prepared by the Contractor in performance of this Contract shall vest in the State, unless otherwise provided for in this Contract. Subject to applicable State and Federal laws, regulations, and contract requirements, the State shall have full and complete rights to reproduce, duplicate, disclose, and otherwise use all such information.

6. CONFIDENTIALITY OF RECORDS

a. The Contractor shall establish, maintain, and practice procedures and controls that are in compliance with Federal and State laws, and that are acceptable to the Department for the purpose of assuring that no information contained in the Contractor's records or obtained from the Department or others in carrying out its functions under this Contract, shall be used or disclosed by it, its agents, officers, or employees, except as is essential to the performance of duties under this Contract.

b. Persons requesting information from the Contractor shall be referred to the Department for access to records in compliance with Title 63, Chapter 2 (Government Records and Management Act), Utah Code Annotated, 1953, as amended.

c. The Contractor also agrees that any information pertaining to recipients shall not be divulged, other than to officers or employees of Contractor as is required for the performance of duties under the Contract.

d. If the performance of duties under this Contract requires the Contractor to disclose information other than as is set forth in this section, Contractor shall apply to the Department for written permission to make such disclosure.

7. RECORD KEEPING, AUDITS, AND INSPECTIONS

a. The Contractor and any Subcontractors shall maintain financial and operation records in sufficient detail to document all transactions relating to the disbursement of contract funds. The Contractors shall make available for audit and inspection all such records relating to Contract services, requirements, and expenditures until all audits initiated by State and Federal auditors are completed, or for a period of five years from the date of termination of this Contract, whichever is longer, and for such period as is required by any other paragraph of this Contract. Records which relate to disputes, litigation, or the settlement of claims arising out of the performance of this Contract, or to cost and expenses of this Contract as to which exception has been taken by the Director, shall be retained by the Contractor until disposition has been made of such disputes, litigation, claims, or exceptions.

b. Contractor agrees to comply with State regulations concerning audit requirements for local governments and non-profit organizations as required under Title 51 Chapter 2 Utah Code Annotated, 1953, as amended. Contractor will provide the Department with a copy of all Reports required to be filed under the State of Utah Legal Compliance Audit Guide. (Generally, all non-profit organizations which receive more than 50% of their funds from Federal, State and local government sources are required to obtain a financial audit by an independent Certified Public Accountant.)

c. Contractor agrees to comply with Federal regulations concerning cost principles and audit requirements where applicable. A schedule of applicable principles and requirements is provided below. See Page 1 section 3 for the corresponding entity type for this contract.

FEDERAL CONTRACT AND GRANT ADMINISTRATION AUDIT REQUIREMENTS

<u>RECIPIENT</u>	<u>COST</u>	<u>AUDIT</u>
<u>REQUIREMENTS</u>		<u>PRINCIPLES</u>
College or University	OMB Circular A-21	
Non-Profit Organization	OMB Circular A-122	OMB Circular A-133
Commercial Organization	48 CFR 31	

8. SUBMISSION OF REPORTS FOR PAYMENT

- a. The Contractor agrees that payments made by the Department to the Contractor are conditioned upon receipt of applicable, accurate, and complete reports to be submitted by the Contractor. The Department shall pay for completed services within 60 days after receipt of the contractor's invoice.
- b. Reimbursement of expenditure contracts: Contractor agrees to submit to the State monthly expenditure reports within twenty (20) days following the end of the month in which the expenditures were made. Claims shall be made on State-approved claim forms and shall total actual expenditures less fees collected, including all third-party payments. For purposes of defining contract costs, the State shall adopt the applicable OMB circular noted in subparagraph 7c regardless of funding source unless otherwise defined in the contract special provisions.
- c. Fee-for-service contracts: Contractor agrees to submit to the State monthly billings within twenty (20) days following the end of the month in which the services were provided. Billings shall be sufficiently detailed to indicate the number of services provided and the cost of each service.

9. RECOUPMENT OF CONTRACT PAYMENTS

Unacceptable Expenditures: Based upon audit findings, the Contractor agrees to reimburse the Department for all contract funds expended which are determined by the Department not to have been expended by the Contractor in accordance with the terms of this Contract, and such Contract shall be considered executory until such repayment is made. The Department may also elect to withhold reimbursement amounts from any further payments due the Contractor under this Contract, any other current contract between the State and the Contractor, or any future payments due Contractor dealing with a similar activity from Department under a subsequent agreement.

10. WARRANTY

Contractor warrants that:

- a. All services shall be performed in conformity with the requirements of this Contract by qualified personnel in accordance with generally recognized standards.
- b. All non-service items furnished pursuant to this Contract shall be free from defects and shall conform to Contract requirements. Any items determined by the Department to be in nonconformity with this warranty shall be repaired or replaced at the Department's option and at the Contractor's expense, for up to one year following the completion or termination of this Contract.

11. MODIFICATIONS AND WAIVERS

- a. This Contract contains the entire agreement between the parties, and any statements, promises, or inducements made by either party or agent of either party which are not contained in this written Contract are invalid and not binding.

b. The terms, scope of work, or amount in this Contract may not be enlarged, modified, or reduced except by written amendment signed by the parties. No change, alteration, or erasure of any printed portion of this Contract is valid or binding unless agreed to and initialed by both parties.

12. INDEMNIFICATION

The Contractor hereby agrees to indemnify and save harmless the State of Utah, the Department, and their officers, agents and employees from and against any and all loss, damages, injury, liability and claims therefore, including claims for personal injury or death, damages to personal property and liens of workmen and materialmen, howsoever caused, resulting directly or indirectly from the performance of this Contract by the Contractor.

13. DEFAULT AND TERMINATION

a. Both parties shall have the right to terminate this Contract in whole or in part with cause which includes, but is not limited to, failure to perform any requirements of this Contract or failure to make satisfactory progress toward performance. In such case, the party terminating the Contract shall transmit a 15-day notice of intent to terminate citing the cause for termination to the other party by certified mail, return receipt requested. If the default is not cured within the 15-day notice period to the satisfaction of the terminating party, this Contract shall then terminate 45 days from receipt of the notice or at a later date specified in the notice.

b. Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, or otherwise available. The State agrees that it will use its best efforts to obtain such funds. In the event funds are not appropriated or otherwise are unavailable to continue the payments under this Contract, the Department may terminate this Contract by giving thirty (30) days' written notice by certified mail, return receipt requested, effective upon receipt or such later date as specified in the notice.

c. If required by a reduction in Federal funding, or otherwise required by Federal or State Law, the amounts authorized in this Contract shall be reduced or the Contract terminated with thirty (30) days' written notice by certified mail, return receipt requested to the Contractor.

d. If the Contractor defaults in any manner in the performance of any obligation under this Contract, or if audit exceptions are identified, the Department may, at its option and in addition to other available remedies, either adjust the amount of payment or withhold payment until satisfactory resolution of the default or exception. The Contractor shall have the right to written notice of the Department's action in adjusting the amount of payment or withholding payment. Under no circumstances shall the Department authorize payment to the Contractor that exceeds an amount specified in the Contract without an approved amendment to the Contract. The Department may, at its option, withhold final payment under the Contract until receipt of all final reports and deliverables.

e. In the event of termination as provided in this section, the Contractor shall stop all work as specified in the notice of termination and immediately notify all subcontractors in writing to do the same.

f. The Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this section.

g. In the event the Director terminates this Contract in whole or part as provided in this section, the Department may procure, upon such terms and in such manner as it may deem appropriate, services similar to those so terminated.

h. Should the Director procure other services as provided in Subparagraph g, the Contractor shall not be liable for any excess costs for failure to perform this Contract unless failure to perform results from Contractor's fault or negligence. If the failure to perform is caused by the default of a subcontractor, the Contractor shall be liable if the services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the contractor to meet the required schedule.

i. If the Contract is terminated as provided herein, the Director, in addition to any other rights provided in this section, may require the Contractor to transfer title to and deliver to the State, in the manner and to the extent directed by the Director, such partially completed reports or other documentation as the Contractor has specifically produced or specifically acquired for the performance of such part of this Contract as has been terminated. Payments for completed reports and other documentation delivered to and accepted by the Director shall be in an amount agreed upon by the Contractor and the Director.

j. The rights and remedies of the Department enumerated in this section shall be in addition to any other rights and remedies provided by or under this Contract and/or available at law or equity.

14. DISPUTES

Any disputes pertaining to this Contract shall be governed by the rules of the Department, or appropriate Division thereof, in accordance with State law and any applicable Federal law.

15. FEDERAL AND STATE REQUIREMENTS

The Contractor shall comply with all applicable Federal and State requirements including but not limited to the following: *

a. Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. - 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. - 794), and the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disabilities; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. - 6101-6107), which prohibits discrimination on the basis of age; and (e) Utah's Executive Order of 1989 which prohibits sexual harassment in the workplace.

b. When any contractor or subcontractor obtains any products, goods or services which are externally procured, and are paid for in part or totally by EPA funds, the contractor or subcontractor must comply with the Minority Business Enterprise (MBE) and Women Business Enterprise (WBE) utilization requirements as set forth by the EPA and the DEQ. It is the contractor's responsibility to obtain details from the contracting or funding agency.

c.

d. P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this Contract.

*(Contractor may be subject to other State and Federal laws depending on the program and source of funding. If you have questions, contact the awarding agency.)

e. Certification of Compliance with Government-wide Guidance on Lobbying Restrictions (31 U.S.C. - 1352) which requires undersigned to certify, to the best of his or her knowledge and belief, that:

(1) No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress, in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the

undersigned shall complete and submit Standard Form LLL, "Disclosure Form to report Lobbying," in accordance with its instructions.

f. Certification of compliance with 45 CFR Part 76 requires that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (Contract) by any governmental department or agency. In addition, within the past three (3) years they cannot have been convicted of, indicted for, or had a civil judgment rendered against them, nor are presently indicted for the commission of fraud or a criminal offense for acts relating to any public transaction. During this period CONTRACTOR has not had a public transaction terminated for cause or default. If CONTRACTOR cannot certify compliance with any of the statements above, attach a written explanation to the Contract.

16. NOTICES

Whenever notice is required pursuant to the terms of this Contract, such notice shall be in writing, shall be delivered by certified mail, return receipt requested, and shall be directed to the person at the address listed on page 1 of the Contract.

17. RELATED PARTIES

(Applies to Cost Reimbursement Contracts ONLY.) The CONTRACTOR shall not make payments for goods, services, facilities, salary/wages, professional fees, leases, etc., to related parties for contract expenses without the prior written consent of the STATE. Disbursements by the CONTRACTOR to related parties made without such prior approval may be disallowed on audit, and may result in an overpayment assessment.

"Related Parties" for the purpose of this Contract, shall mean organizations/persons related to the CONTRACTOR by any of the following: Marriage; Blood; One or more partners in common with the CONTRACTOR; One or more directors or officers in common with the CONTRACTOR; More than 10% common ownership, direct or indirect, with the CONTRACTOR.

18. AUTHORITY

Provisions of this Contract are pursuant to the authority set forth in Section 19-1-201 (2), Title 63, Chapter 56, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and other related statutes which permit the State to purchase certain specified services, and other approved purchases for the State.

END OF GENERAL PROVISIONS

ATTACHMENT B

TMDL Outline

I. Introduction

A description of the waterbody and its associated watershed including maps as needed.

A discussion of impairment with maps with a statement of intent.

A discussion of the prioritization of the waterbody or justification, if the waterbody is not listed as a high priority.

■ *This section could include such things as:*

- . *waterbody name/ID number/HUC code/watershed description*
- . *the geographic coverage of the TMDL and why this is an appropriate coverage*
- . *the priority of the waterbody on the 303(d) list; if the waterbody/pollutant is not a “targeted” TMDL, discuss why it is now considered “targeted” and how the development of this TMDL will not disrupt the schedule for developing the “targeted” TMDLs.*

II. Water Quality Standards

A discussion of associated impairment with respect to state water quality standards:

Narrative, Numeric Criteria, Antidegradation, or Beneficial Uses.

A discussion of the parameters of concern on the 303(d) listing.

TMDLs result in maintaining and attaining water quality standards.

■ *This section should include description of all standards applicable to the impairment/threat for which the waterbody was listed on the 303(d) list. Further, it should include which components of the state/tribal standards are being implemented through this TMDL, including any numeric, narrative, antidegradation, and use classification components of the standards.*

■ *Describe which uses and pollutants will be addressed through this TMDL; if there are other uses/pollutants of concern described on the 303(d) list that are not being addressed, a statement why they will be addressed at a later time.*

■ *For a particular numeric aquatic life criteria, explain whether the acute and/or chronic standards are being implemented through the TMDL.*

III. Water Quality Standards Target

A discussion of the quantifiable endpoints and how they relate to the achievement of pertinent water quality standards. Include a clarification of the endpoints related to averaging period associated with the endpoint.

Instantaneous readings for parameters

Dominance or seasonal endpoints (algae, macro-invertebrates)

Average values over a period of time (annual or seasonal loads)

TMDLs have a quantified target or endpoint.

■ *This section provides an expression of what water quality standard(s) serve as a target for the TMDL. If the standard being used is not quantified, it should be translated into a site-specific quantifiable target or goal.*

■ *Examples of quantified endpoints related to aquatic life protection:*

- . numeric WQStd = 20 µg/l copper concentration/ 4 day average/ once in 3 years exceedence rate*
- . narrative WQStd = no toxic discharges in toxic amounts as interpreted through whole effluent toxicity tests*
- . antidegradation WQStd = no measurable increase in current concentrations of zinc*
- . use classification = no more than 15% fine sediment diameter < 0.85mm in riffle areas (aquatic life use)*

■ *The TMDL “target” will be the value measured to judge success of the TMDL effort. It is recommended that more than one target be used.*

IV. Significant Sources

A discussion of all significant sources of pollutant(s).

TMDLs must consider all significant sources of the stressor.

■ *This section identifies **all the pollutant sources** that contribute to the impairment or threat being addressed by the TMDL. The description should also discuss the causative factors that result in the impairment or threat (e.g., the sources of nutrients are irrigation return flow, a municipal treatment facility, and natural background; the shallow depth of the receiving stream along with the high temperatures and substrate type result in excessive algal blooms during the summer season; or, increased frequency and intensity of runoff from the watershed results in de-stabilization of the receiving stream)*

■ *The identification of sources must be explicit for those sources that will need to be controlled to achieve the water quality standards; all other sources may be lumped into one term, with just a narrative description of the sources being included in that one term (e.g., the primary source of ammonia is the municipal treatment facility; background sources include nonpoint sources from agricultural activities.)*

■ *It is helpful to provide a distribution of the TMDL on a source-by-source basis.*

V. Technical Analysis

A discussion of the appropriate level of technical analysis needed to support the TMDL.

TMDLs are supported by an appropriate level of technical analysis.

■ *The technical analysis should be detailed enough to explain why the pollution controls being suggested in the TMDL, once implemented, will achieve the TMDL and why the TMDL, once implemented, will achieve the water quality standard target. This “**linkage**” analysis between the controls, the TMDL, and the WQStnds target will vary in rigor, depending upon such things as the data available, the models used, the type of pollutant, and the types of pollutant sources.*

■ *TMDLs that address primarily nonpoint sources are often best professional estimates, base on*

modeling and/or monitoring results within the watershed whereas TMDLs that address primarily point sources have a more detailed analysis an expression of acceptable loads, based on modeling.

VI. Margin of Safety & Seasonality

A discussion of the mechanism used to address uncertainty associated with the TMDL.

Examples may include:

- Future monitoring, interim endpoints indicative of the effectiveness of implementation, and mechanisms that would drive re-evaluation and refinement of TMDL endpoints.
- Conservative selection of endpoints to assure attainment of water quality standards.
- A discussion of the seasonality impacts that may be associated with the TMDL. This discussion may be related to seasonal patterns occurring in the watershed, the monitoring strategy or data analysis, or the seasonality associated with BMP implementation.

TMDLs must contain a margin of safety and consider seasonality.

■ *Margins of safety can be explicit or implicit. In either case, an explanation should be included that explains why the MOS is reasonable to assure attainment of the water quality target.*

■ *Implicit margins of safety include the use of conservative assumptions during the establishment of the 1) water quality standard target, 2) the TMDL, or 3) the water quality controls. Also, post-implementation monitoring related to the effectiveness of the TMDL controls can be used to assure attainment of the targets, using adaptive management during the implementation phase.*

■ *The TMDL documentation should include a discussion of how seasonality was considered in development of the target, the TMDL, the allocation scheme, and/or the pollutant controls.*

VII. TMDL

An estimate of the acceptable load or the degree to which the current pollutants (loads) need to be decreased to attain the defined endpoints.

Examples:

- 50% decrease in at risk stream banks
- 2,000 Kg/Yr decrease in total dissolved solids loading
- Increase in fish populations to 500 salmonids per mile

TMDLs include a quantified pollutant reduction target, but this target can be expressed in any appropriate manner.

- *This section provides the TMDL, itself, either in terms of absolute load (e.g., 400 lbs/day of arsenic) or reduction in load or stressor (e.g., decrease in 3 miles of erodible streams banks).*
- *This value may or may not be measurable, but it should be quantified in a numerical expression. (e.g., an estimate of 60% reduction in long term sediment yield from a watershed is the TMDL, based on predictive modeling methods. This is quantified, but may not be monitored directly in the field.)*
- *The TMDL should be described in terms of applicable averaging period, season, and geographic location, if applicable. Averaging period most often relates back to the averaging period for the water quality standard (e.g., 1 hour, 4 day, 30 day, seasonal, annual)*
- *A description of the critical conditions upon which the TMDL is based (if any) (e.g., is this a TMDL based on critical low flow or high flow?)*

VIII. Allocation

A rationale that addresses all sources and causes that are significant in the attainment of the TMDL endpoints/targets. Include the allocation of loads to those significant sources, a description of what controls will be applied, who will be responsible for applying them, and where and when they will be applied.

TMDLs apportion responsibility for taking actions.

- *The allocation of the TMDL is done on a source-by-source basis, with the “source” being defined in any number of ways as mentioned in the next bullet. The allocation can be expressed in terms such as absolute loading, a fraction of the % reduction, or a description of the how the various pollutant controls will be spatially allocated throughout the watershed (e.g., a map showing what controls will be applied within the watershed.) Again, not all sources have to have an individual allocation; only those sources that need to be controlled need an individual allocation; all other sources can be “lumped” into one allocation term.*
- *Allocations can be done on a basis that fits the particular pollutant/watershed. Examples include allocations done by: individual discharger, tributary/sub-watershed area, source category, land use category, land parcel.*

IX. Public Participation

Describe the stakeholder involvement and provide a widespread opportunity for review either by public notices, public meetings or posting of draft TMDL’s on DEQ’s website.

TMDLs involve some level of public involvement or review.

- *It is recommended that a the notification of the proposed TMDL be widely disseminated (e.g., newspapers, internet, etc.)*
- *Notifications or solicitations for comments regarding the TMDL should clearly identify the product as a TMDL and the fact that it will be submitted to EPA for review.*
- *When the TMDL is submitted to EPA for review, a copy of the comments received by the state should be also submitted to EPA.*
- *The public should be given the opportunity to be involved from the very beginning of the TMDL process.*

ATTACHMENT C

PIP Guidelines

FORMAT FOR WATERSHED PROJECT IMPLEMENTATION PROPOSALS

1.0 PROJECT PROPOSAL SUMMARY SHEET

A Project Proposal Summary page will precede each proposal. The format to be followed has been provided (Attachment 1).

2.0 STATEMENT OF NEED

- 2.1 Discuss the project water quality priority as specified in the NPS Management Plan, the Unified Watershed Assessment, (if applying for incremental funding), the Clean Water Act (CWA), the §305(b) Report, and/or the CWA §303(d) list. Describe the need for the project, and the existing or potential water quality problem(s). The information should include a listing of the pollutant type, water quality standards violated or threatened and the uses of the water resource not being met or being threatened (e.g., kind and amount of recreational use, drinking water supply for how many people, spawning stream). The stream and/or aquifer water quality classification should be provided, if available.

If the waterbody being addressed is included on the State's 303(d) list of impaired and threatened waters, the need for, and the approach being used, for the development and/or the implementation of a TMDL should be included.

When an intermittent stream is involved in the project, either as a pollutant load contributor, or as a 303(d) listed segment requiring a TMDL, describe the proximity of the stream to the water body being impaired and the portion of the pollutant load being contributed by the intermittent stream.

- 2.2 Identify the waterbody, and provide descriptive information that might be useful regarding the water resource, which will aid in judging the value of the project. Example information pertinent to a stream includes hydrologic unit code (HUC), stream order, flow characteristics, geomorphic stream classification, physical condition and stream stability. Information concerning lakes/reservoirs should include lake size, trophic status or other measures of lake health and any additional descriptors derived from previous investigations (e.g., Clean Lakes projects, advanced wetland identification, etc.). These may be summarized rather than referenced in the proposal.

In addition, describe aquatic habitat health. There should be a description of the baseline information and data sources with an assessment as to the quality

(accuracy/precision) of existing data.

- 2.3 Provide maps (especially Geographic Information System (GIS) maps) showing the location and size of the waterbody and watershed and/or aquifer. Information incorporated on the map should include land uses, land ownership, project location, and important water resources (including major wetlands). Also, provide information on locations of present, past and future sampling sites, sources of problems or critical areas and other pertinent information such as wells, natural springs, and point sources.

- 2.4 Provide general information on the watershed such as topography, elevation, land ownership, land use, precipitation (with seasonal distribution), other climatic information, soils, geology, erosion rates, aquifer vulnerability, source water and wellhead protection areas, vegetation conditions, and man-made features. Include available information that is relevant to the type of watershed water quality problem.

For example, for agricultural projects: list crop types, irrigation systems, physical condition of stream, types of enterprises (cow-calf, horse, sheep), management systems, Animal Unit Months (AUMs), range site, range condition and trend. Section 319 funds may not be used to increase acreages under cultivation.

For silvicultural projects: provide miles of temporary and permanent roads within 100 feet of perennial drainages, acreage of timber sales within 100 feet of perennial drainages, percent of watershed under timber management, elevation and aspect of cut.

For urban projects: list type of urban development, acreage of various land uses such as parks, housing, industrial areas.

For mining projects: provide volume, locations, and chemistry of tailings and adit discharges, and groundwater-surface water relationships.

- 2.5 Provide available information that defines the type of watershed water quality problem (chemical, biological, physical/habitat). Identify, to the extent possible, the source(s) of the pollutant or cause of the environmental degradation, and the relative contribution of these sources. If chemical or sediment constituents are involved, provide available loading and concentration information. If problems are related to physical/habitat decline, document the cause of the degradation. Include information on the timing of the pollution problem (e.g., storm-event related, low flow or continuous).

For example, for agricultural projects, if irrigation return flow is the source, provide information on the flow, concentrations of the pertinent

constituents and their loads.

For silvicultural projects, if erosion from forest practices such as timber cutting and road construction is resulting in habitat disruption from excessive sediment load to the adjacent waterbody, provide the appropriate documentation connecting the land use practice with the degraded or potentially degraded beneficial use.

For urban projects, if increased development will be threatening water quality, define the current sources and anticipated sources and project loadings.

For mining projects, if abandoned mine tailings are a source of water quality impairment provide the chemistry of tailings, adit discharges, loading and concentrations of the important constituents, and groundwater-surface water relationships to the extent that they are known.

3.0 PROJECT DESCRIPTION

- 3.1 Describe the environmental and programmatic goals(s) for the watershed and the project. There is a distinction between environmental and programmatic goals; avoid confusing the two, substituting programmatic for environmental goals. Goals are broad statements linked to the project need and are achievable through measurable objectives. Goals may describe, for example, BMP's to be implemented and why; new tools to be developed and for whom; the benefits expected to be derived in terms of water quality, aquatic habitat, and stream stability; and changes in public attitudes or awareness of NPS problems and solutions.

One example of an environmental goal would be "Restore the recreational health of the Green River by decreasing nutrient loads that contribute to over-enrichment." Which would be based on environmental objectives such as "Achieve a biomass concentration of 150 gm/m² as a summer time instantaneous reading and 100 gm/m² as a summer time 60-day average reading in the selected monitoring locations." This would be backed up by programmatic goals such as "Identify and implement appropriate grazing practices to reduce the amount of sediment and nutrients entering the Green River" and programmatic objectives such as "Sponsor a demonstration project of seasonal management of livestock on the Clear Fork of the Green River".

Both types of goals/objectives are crucial to a TMDL in that the environmental goal/objectives provide a water quality standards target, while the programmatic goals/objectives describe the means by which we get to the water quality target.

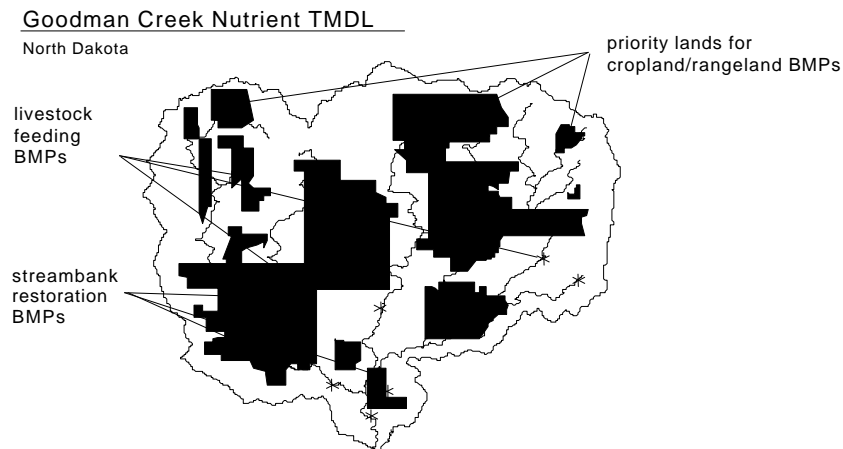
If a TMDL is being developed for the project, the environmental goals/objective of the project could also serve as the water quality standards endpoint for the TMDL. The TMDL endpoint can be expressed in any number of ways, such as pollutant concentration, pollutant load, desired biological condition, stream morphological condition, an acceptable amount of benthic sediment or suspended sediment, or an acceptable amount of benthic or suspended algae.

- 3.2 List and provide a narrative description of each objective and task. Objectives specify in more detail what is to be accomplished to help meet the goal. Each objective should have at least one associated task to be performed to accomplish the objective. Tasks are specific activities that include milestones, outputs, responsible parties, and costs. Reference can be made to the milestone or budget table for the specific quantities of products.

Objectives and tasks to achieve a total maximum daily load (TMDL) have the potential to cover sources as diverse as grazing, stream restoration, irrigation, or feedlots. By describing the Best Management Practices (BMP's) that will be implemented, and how their implementation contributes to achieving the objective, the cumulative benefits of implementing the objectives and tasks described should be designed to add up to meeting the goal(s) of the project as described in 3.1.

Objectives and tasks associated with a TMDL essentially outline a picture of allocation in a watershed. They can be envisioned as an "allocation of BMP's": applying "X" BMP's at "X" locations in the watershed, to create a picture of allocation. It has been shown to be effective when maps are used to show the distribution of BMP's within the project area, thus showing the allocation of the TMDL throughout the watershed in terms of control actions. If an estimate of loading reduction can be made on a sub-watershed basis, this could also be mapped out or discussed within the narrative.

Figure 1 - One example of a watershed allocation map



Finally, if a TMDL is being developed, the TMDL, itself, needs to be expressed within the project proposal. This could be integrated into either the environmental or programmatic goals/objectives. Technical assistance is available for TMDL development and implementation.

The following are examples of goals, objectives and accompanying tasks in the **recommended format** from several different 319 projects. Project examples have been mixed and matched and presented in a generic format. They demonstrate goals and objectives for uplands as well as near-stream/instream areas. What we see with many projects is that they address both. Modeling was used to identify/estimate sediment loads in some of the examples.

GOALS: *A number of TMDL targets are illustrated here to meet the goal of reducing impairment on stream X.*

Goal: *First, is the establishment of a numeric goal for suspended sediment load. Meeting a state numeric standard for suspended sediment is an obvious goal, but state X lacks such a standard. In addition, because of the relationship between discharge and TSS, it is difficult to set a specific target because these targets could be met in low water years and exceeded in unusually wet years. One proposed goal, then, is to: **decrease the slope of the regression between discharge vs. TSS by half in 4 out of 5 years (for stream x, from 0.51 to 0.26).***

Objective: *Reduce sediment coming from 96,000 acres of eroding poor condition rangeland by 130,000 tons/year.*

Task: Reestablish vegetative ground cover on 3,000 acres of rangeland (very poor condition and located on south facing slopes) by: controlling weeds on 1,000 acres; reseeding 3,000 acres with improved varieties of grasses and forbs, installing fencing, livestock water developments; applying deferred grazing on 3,000 acres.

Products: Establish suitable vegetative cover on 3,000 acres, reseed 3,000 acres, install cross fencing and livestock water developments and deferred grazing on 3,000 acres. Reduce sediment, with associated phosphorous, by 24,000 tons annually.

Cost: \$70,000

Goal: *Another TMDL target to measure reduction in suspended sediment load is to compare sediment loading with a neighboring watershed in which excessive bank erosion or suspended sediment levels are not a problem. **The numeric goal could be that sediment load during spring run-off does not differ significantly between stream X and the reference stream in 4 out of 5 years.***

Goal: *Another TMDL target is based on a quantifiable reduction in the amount of erosive banks. By decreasing the contribution of sediment and increasing channel stability, this would address several of the identified stressors in stream X including high TSS, high total phosphorus, and high substrate embeddedness.*

*One approach to this would be to identify priority stream banks (i.e., banks that are a significant source of sediment or are implicated in potential loss of stream length). For example, priority banks for stream X are identified as eroding banks with a length of greater than 100 feet and or height of greater than 5 feet. An over all target is to **decrease the percentage of eroding banks by 50% over the next 10 years.***

Objective: *Improve riparian habitat condition and function along 30 miles of stream, and reduce impairments to water quality caused by sediment loading from 5 miles of critically eroding stream banks and channel. Practices that will be used to achieve this objective will include proper grazing management, fencing, off-stream livestock water developments, pasture management, stream bank stabilization (revetment), channel vegetation, and critical area seeding. (Refer to the Budget Tables for costs and quantities by practice to be implemented with each task listed below).*

Task: NRCS will assist cooperators in implementing vegetative stabilization BMP's to protect 3.75 miles of stream banks (at least 75% of the damaged area). Measures to be implemented will be primarily revegetation BMP's such as dormant stump planting, critical area planting, channel vegetation, and tree revetment.

Product: Stability of stream banks that will benefit fifteen (15) miles of stream banks and stream channel reducing sediment loading to Otter Creek.

Cost: \$99,000

Task: NRCS will assist cooperators in implementing practices that will facilitate grazing management, control animal access along approximately 22 miles (75%) of stream, protect stream banks on at least 75% of the damaged area and enhance and protect the riparian zone. Practices that will be implemented will include fencing, development of off-stream livestock watering facilities and planned grazing systems.

Product: Improved grazing management, controlled animal access along the stream, reduced sediment loading from stream bank erosion; improved condition and function of riparian habitat along 22 miles of stream. Cooler water temperature in the stream will benefit fisheries.

Cost: \$122,000

Goal: *Another TMDL target is to replace stream channel lost by reducing the 9,100 feet of channel lost by 25% over the next 5 years. By reestablishing meanders, flow velocities will be dissipated during high water events, resulting in decreased erosion and increased channel stability. In addition, habitat conditions for fish will be improved with return to a more natural channel configuration that includes undercut banks. This approach requires determining proper channel geometry configuration based on field data.*

Goal: *Another TMDL target is to reduce substrate fines < 6.35 mm in substrate cores from 50% to 30% in spawning riffles over the next 5 years. Such a reduction could increase egg-fry survival threefold from the estimated 6 percent to 15 percent. In addition, a reduction in surface fines would be an indicator of improvements in channel and bank stability.*

Goal: *Another TMDL target is to address thermal problems in stream X. The target, or goal, is that **temperatures not exceed 73 degrees Fahrenheit for more than 10 days per year along the length of the stream.***

Goal: *Another TMDL target might address dewatering, establishing goals **for not less than 9 cfs in the lower X and upper X reach (es) of stream X, and not less than 3 cfs in reaches X through Z.***

Number tasks in a continuous sequence. For example, under Objective 1, there

might be a total of five tasks identified. The next task identified under Objective 2 should be listed starting with Task 6 and followed sequentially. Following this format is necessary, as it will assist the State agency in entering project information into the Grants Tracking System (GRTS).

- 3.3 Using a format similar to the attached milestone table (Attachment 2), provide a milestone table that lists outputs, quantities and timing of each output, agency(ies) responsible for each task and estimated project milestones listed sequentially for each objective. Interim milestones need to be sufficiently frequent so that problems can be identified and corrected. Milestones should be included for mid-year, annual, and final project reports, and monitoring. Estimated costs for each task should be correlated with the project budget table, Section 6.0.
- 3.4 When appropriate identify the necessary environmental permits (e.g., permits under CWA Section 404) required to conduct the project. If a National Pollution Discharge Elimination System permit is needed, justify why it is a NPS project. In areas, which it appears that a permit may be needed (e.g., metropolitan or mining areas) and a permit is not identified as being required, provide an explanation.
- 3.5 Briefly explain why the lead project sponsor is the appropriate entity to coordinate and/or implement the project.
- 3.6 Describe the plans and roles/responsibilities for assuring proper operation and maintenance (O&M) of §319 funded BMP's. This is to include frequency of on-site O&M evaluations during the life of the BMP, entity to do the evaluations, frequency of on-site O&M reviews with project sponsors by the state/tribe, follow-up procedures with the landowner/user in case there are O&M problems (and the state/tribal role), and actions to be taken if a landowner abandons a §319 funded BMP before the end of the BMP's lifespan. All or part of the above can be covered by written state/tribal procedures, but it needs to be referenced in the proposal.

4.0 COORDINATION PLAN

- 4.1 Identify the lead project sponsor, and each cooperating organization. Discuss the responsibilities, roles and commitments assumed by the cooperators and/or contractors in the project planning and implementation. Also state the mode of agreement by which cooperating organizations will interact (e.g., MOU, MOA, contract or informal agreement).
- 4.2 Describe local support for the project. Include the implementation/linkage to source water assessment and protection programs. Some examples of local support are: requests from the local landowners, conservation district, or county

for the project; results from town meetings; or favorable reactions to the description of proposed project in a local newspaper.

Letters of commitment of resources are encouraged by EPA. The State should certify that all the appropriate letters of commitment have been received rather than attaching the support letters to the proposal.

- 4.3 EPA is concerned that use of 319(h) funds be well coordinated with other pertinent programs. Local project sponsors should obtain from their State NPS coordinator the information needed to address coordination and linkages.

Describe how the project will coordinate with pertinent, 319 and non-319 funded NPS education programs, watershed projects, demonstration sites, and training programs being conducted by other organizations. Other programs and agencies which may have comparable responsibilities and linkages include groundwater programs, drinking water/source water programs, projects conducted by water conservancy districts, water quality and cost share programs assisted by the NRCS, resource restoration projects assisted by the Forest Service and the Bureau of Land Management, and educational activities conducted by the Cooperative Extension Service.

- 4.4 Describe similar activities that are being undertaken in the watershed. Provide a description of how the proposed project complements the existing project and does not duplicate §319 project activities.

This consideration differs from the coordination issue presented in section 4.3. If 319 funds are being proposed to support activities that are normally the responsibility of other organizations and/or funding sources, provide an explanation justifying the use of NPS funds. EPA is concerned that Section 319 funding not be used to replicate efforts or assume other agencies' responsibilities for activities being carried out in the project watershed.

Examples of other agencies and programs which may be conducting similar activities or producing similar materials are: Information and Education efforts funded by the EPA Pollution Prevention and Environmental Education Programs; projects funded by Clean Water Act 104(b)(3); Cooperative Extension Service; school districts; state water research centers; The Nature Conservancy; universities; and state natural resources or wildlife agencies.

5.0 EVALUATION AND MONITORING PLAN

- 5.1 It is a priority to the States, Tribes and EPA that data collected under the 319 program be useable and of high quality. Region 8 states and some tribes have EPA-approved Quality Assurance Project Plans (QAPPs) for the nonpoint source

program (or separate QAPPs for ground water monitoring and surface water monitoring). Quality Assurance Project Plans contain the 16 elements required by the EPA Region 8 Quality Assurance Program.

All projects using section 319 funds to collect "environmental data" are required to have a project-specific sampling and analysis plan (SAP). Sampling and Analysis plans must address the 16 elements required of the QAPP, and are approved by the State and EPA. Contact the State or Tribe for specific guidelines on preparing SAPs.

Project sponsors may either reference the State QAPP for the standard operating procedures (SOPs) for each type of monitoring to be performed (e.g., photo points, water sample collection, fish shocking, etc.), or attach them to the SAP. Identify any site-specific amendments required for this project that are not covered by the QAPP. A plan/schedule to develop the appropriate procedures must be identified in the proposal. States and Tribes will approve project-specific SOPs.

The project sponsor has the option of providing the SAP (and SOPs referenced) in this section of the project proposal, or including the development of the SAP and SOPs as project tasks with specific milestone dates. The SAP should reference any applicable information from the project proposal and the State's programmatic QAPP, where applicable, to avoid redundant information.

- 5.2 Describe the monitoring strategy for the watershed, including goals, objectives, and tasks proposed to evaluate whether the project goals and objectives have been met. Describe sampling and analysis design, (e.g., up-stream/down-stream, paired watersheds, site trend, existing groundwater wells, up-gradient/down-gradient wells, geomorphology and/or riparian measurements, random, systematic, stratified random (e.g., by season or discharge)). and specify parameters to be measured: total suspended sediment, temperature, phosphorous, nitrate, etc.

Locate on a map sampling sites in relationship to BMP applications and priority treatment areas.

- 5.3 Describe how and when data will be stored, managed and reported. All data collected using §319 funding must be entered into the EPA STORET database (Memorandum of Agreement for Storing Water Quality Data in STORET, October 20, 1998). While the State is responsible for assuring that the data is entered into the database, the project sponsor may do this if they have the capability. The sponsor should contact their State NPS coordinator to find out how to gain access to this database. This requirement should be addressed in this section.

Results from the data analysis should be used to evaluate progress, determine if changes in project/monitoring design need to be considered and assess the overall final project success. Identify organization(s) responsible for project evaluation and

specify how the resulting information from the data analysis will be shared and utilized for future projects.

5.4 Describe any models used, if applicable.

5.5 Describe the long-term funding plans for the operation and maintenance (O&M) of restoration activities.

6.0 **BUDGET**

6.1 Present the project budget in a format similar to the attached budget summary (Attachment 3), indicating the amount and source of all federal and non-federal funds that will be used during each year of the project. The budget table is to include personnel support, BMP and other expenses that are expected to be paid with Section 319 and State and local match sources. Cost by task is not required. The federal fiscal year (October 1-September 30) should be used to discuss and display budget information.

7.0 **PUBLIC INVOLVEMENT**

Describe the process for ensuring public involvement in the project.

ATTACHMENT A: STANDARD TERMS AND CONDITIONS

AUTHORITY: Provisions of this contract are pursuant to the authority set forth in 63-56, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the STATE to purchase certain specified services, and other approved purchases for the STATE.

CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE: The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.

LAWS AND REGULATIONS: Any and all supplies, services and equipment furnished will comply fully with all applicable Federal and State laws and regulations.

RECORDS ADMINISTRATION: The CONTRACTOR shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the CONTRACTOR for costs authorized by this contract. These records shall be retained by the CONTRACTOR for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The CONTRACTOR agrees to allow STATE and Federal auditors, and STATE Agency Staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.

CONFLICT OF INTEREST: CONTRACTOR represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended.

CONTRACTOR, AN INDEPENDENT CONTRACTOR: The CONTRACTOR shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the STATE to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the STATE, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the CONTRACTOR by the STATE. The CONTRACTOR shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the STATE for these contract services. Persons employed by the STATE and acting under the direction of the STATE shall not be deemed to be employees or agents of the CONTRACTOR.

INDEMNITY CLAUSE: The CONTRACTOR agrees to indemnify, save harmless, and release the STATE OF UTAH, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the negligence of the CONTRACTOR'S officers, agents, volunteers, or employees, but not for claims arising from the State's sole negligence.

EQUAL OPPORTUNITY CLAUSE: The CONTRACTOR agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the CONTRACTOR agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.

SEPARABILITY CLAUSE: A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.

RENEGOTIATION OR MODIFICATIONS: This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by the parties hereto, and attached to the original signed copy of the contract.

DEBARMENT: The CONTRACTOR certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the CONTRACTOR cannot certify this statement, attach a written explanation for review by the STATE.

TERMINATION: Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon 90 days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.

SALES TAX EXEMPTION: The State of Utah's sales and use tax exemption number is E33399. The tangible personal property or services being purchased are being paid from State funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.

WARRANTY: The contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or

software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the State has relied on the contractor's skill or judgement to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract. **PUBLIC INFORMATION:** Contractor agrees that the contract will be a public document, as to distribution of copies, and Contractor gives the STATE express permission to make copies of the contract and/or of the response to the solicitation in accordance with the State of Utah Government Records Access and Management Act. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation. (Revision date: Apr 24, 2002)